

bargaining agreement or not, a copy of the agreement or understanding should be attached to the application. If it is not in writing, however, the application to the Administrator for approval of a basic rate should contain a written statement describing the substance of the agreement or understanding, including the proposed effective date and term of the agreement or understanding. The term of the agreement or understanding may be of definite duration, or may run indefinitely until modified or changed. If an agreement or understanding is modified, a new application for authorization should be made.¹⁹

[20 FR 5683, Aug. 6, 1955, as amended at 21 FR 338, Jan. 18, 1956]

§ 548.402 Applicable overtime provisions.

The application should also contain a description of the terms of employment relating to overtime so that the Administrator can determine how the established basic rate will be used if it is approved. For instance, if the employees are to be paid time and one-half the basic rate for all hours worked in excess of 35 each workweek, this should be stated in the application. If the employees are to be paid double time for work on Sundays the application should so state.

[20 FR 5683, Aug. 6, 1955]

§ 548.403 Description of method of calculation.

The established basic rate for which approval will be sought will normally be a formula or method of calculation of a rate rather than a specific dollars and cents rates.²⁰ The application should contain a complete description of the formula or method of calculation of the established basic rate, including any necessary examples which will enable the Administrator to understand how the rate will be computed and applied.

[20 FR 5683, Aug. 6, 1955]

¹⁹ See § 548.200 for a further explanation of the requirements as to the agreement or understanding establishing the basic rate.

²⁰ See § 548.200.

§ 548.404 Kinds of jobs or employees.

The application should describe or otherwise identify the employees to whom the established basic rate will apply. The individual employees need not be identified by name but may be described in terms of job classification, department, location or other appropriate identifying characteristics.

[20 FR 5683, Aug. 6, 1955]

§ 548.405 Representative period.

(a) The application must set forth the facts relied upon to show that the established basic rate is substantially equivalent to the average hourly earnings of the employee exclusive of overtime premiums over a representative period of time.²¹ The basic rate will be considered "substantially equivalent" to the average hourly earnings of the employee if, during a representative period, the employee's total overtime earnings calculated at the basic rate in accordance with the applicable overtime provisions are approximately equal to the employee's total overtime earnings computed on his average hourly earnings for each workweek in accordance with section 7(a) of the Act.²²

(b) The length of time constituting a representative period will depend on the factors that cause the employee's average hourly earnings to vary appreciably from week to week. For instance, if the variation in earnings of an employee paid on an incentive basis is due to the difference in availability of work in the slow and busy seasons the period used for comparison of overtime earnings would have to include both a slow and a busy season in order to be representative. Likewise, if a piece-worker's average hourly earnings vary appreciably from week to week because of differences in materials or styles worked on, the period used for

²¹ See §§ 778.200 through 778.207 of this chapter for further discussion of overtime premiums which may be excluded from the regular rate of pay.

²² See §§ 778.208 through 778.225 of this chapter for further discussion of the exclusion of vacation pay, holiday pay, discretionary bonuses and other payments from the average hourly earnings which comprise the employee's regular rate of pay.